No. 79-1236

Supreme Court, U.S.
F I L E D
SEP. 15 1980
MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1980

FRANK L. CARSON, LAWRENCE HATCHER, and STUART E. MINES,
Petitioners,

v.

AMERICAN BRANDS, INC., T/A THE AMERICAN TOBACCO COMPANY; LOCAL 182, TOBACCO WORKERS INTERNATIONAL UNION,
Respondents.

ON A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

JOINT APPENDIX

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September 2, 1980

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GENERAL DOCKET

UNITED STATES COURT OF APPEALS

FOR THE

FOURTH CIRCUIT

APPEAL FROM	CASE NO.
THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF VIRGINIA, AT RICHMOND.	77-2260 Civil

Multiple party - LR 19

TITLE OF CASE	ATTORNEYS FOR APPELLANT
Frank L. Carson, Lawrence Hatcher, Stuart E. Mines, Appellants, vs. American Brands, Inc., t/a The American Tobacco Company; Local 182, Tobacco Workers International; Tobacco Workers International Union, Appellees.	P. Peter Sherwood, Esq. 10 Columbus Circle, Suite 2030 New York, NY 10019 212/586-8397 Henry L. Marsh, III, Esq. William H. Bass, III, Esq. Randall G. Johnson, Esq. P. O. Box 27363 Richmond, VA 23261 804/648-9073 John W. Scott, Jr., Esq. 615 Caroline Street Fredericksburg, VA 22401 703/373-2700 ATTORNEYS FOR APPELLEE Jay J. Levit, Esq. Suite 2120 Central National Bank Bldg. Richmond, VA 23219 804/644-5453 Henry T. Wickham, Esq. D. Eugene Webb, Jr., Esq. P. O. Box 1122 Richmond, VA 23208 804/644-6011

No. BELOW: C/A 75-0553-R

JUDGE BELOW: D. Dortch Warriner

DATE OF JUDGMENT: June 2, 1977

NOTICE OF APPEAL FILED: June 24, 1977

DATE	ACCOUNT OF APPELLANT	Received	Disbursed	REMARKS
10/12/77	Clerk's docketing fee	350 00		

GENERAL DOCKET

UNITED STATES COURT OF APPEALS
FOR THE
FOURTH CIRCUIT

CASE NO. 77-2260	APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF VIRGINIA, AT RICHMOND.

DATE	PROCEEDINGS	Filed
10/12/77	Record on appeal in one volume (Vol. I) filed and appeal docketed. jb	
10/12/77	Defendant American Brand's Answers to Plaintiffs' Interrogatories in one jacket (Vol. II), Answer of American Brands to Plaintiffs' Second Interrogatories in one box (Vol. III), filed. jb	
10/12/77	Depositions in sixteen volumes (Vols. IV thru XIX) filed. jb	
10/12/77	Order establishing briefing schedule pursuant to LR 19, filed. jb	
10/14/77	Appearance of Levit for appellees (Local 182 & Tobacco Workers Intnl. Union) filed and entered. mjk	
10/17/77	Appearance of Webb and Wickham for appellees (American Brands) filed and entered. mjk	
10/19/77	Appearance of Sherwood for appellants filed and entered. mjk	
10/20/77	Appearance of Scott for appellant filed and entered. mjk	
10/20/77	Appearance of Marsh, Bass & Johnson for appellants filed and entered.	mjk
11/10/77	MOTION of appellant for an extension of time to file brief and appendix to December 20, 1977, filed. MOTION GRANTED. (fls)	
12-20-77	Ten (10) copies of the joint appendix filed. (12-20-77 dmh).	
12-22-77	Twenty-five (25) copies of the appellant's brief filed. (12-22-77 dmh).	
1/11/78	Appellee not to file brief per letter 1/11/78 dbb	
1/17/78	Motion of appellant for summary reversal, filed. (ecr)	
1/25/78	Defendant's response to motion for summary reversal, filed. (ecr) Transmitted to Dulcey along with motion.	
1/31/78	ORDER denying motion for summary reversal, filed. (ecr) Certified copies to Sherwood, Marsh, Bass, Johnson, Scott, Levit, Wickham.	
1/31/78	Motion for summary affirmance, response to motion, proposed order sent to Judges Hall, Haynsworth and Boreman. Copy of appendix sent to Judge Boreman; record retained in Clerk's Office. (JBH/vsl)	
2/7/78	Panel on motion revised to KKH, CFH, HLW. Papers sent to HLW. (JBH/vsl)	
2/8/78	ORDER rescinding this court's order of Jan. 31, 1978, filed. (ecr)	
3/27/78	ORDER denying appellant's motion for summary reversal and denying the suggestion of the American Brands to dismiss appeal, filed.	ecr
3/28/78	ORDER establishing briefing schedule for the appellee, filed. (ecr)	
4/26/78	Twenty _Five (25) copies of the appellee's brief filed.,HD-rbs	
5/15/78	Twenty-Five (25) copies of the appellant's reply brief filed . rbs	
5-30-78	Negative Local Rule 17 disclosure (American Brands, Inc.) filed. dhb	
10-3-78	Cause argued before Judges Winter and Hall, Circuit Judges and Hoffman District Judge and submitted. (wtc)	
2/9/79	Appellants' supplemental memorandum filed. plm	
2/12/79	Supplemental memorandum of appellees filed (mis-directed to district court). plm Transmitted to HLW, KKH, WEHoffman.	
2/22/79	Appellant's supplemental reply memorandum filed. (fls) Transmitted to HLW, KKH, WEHoffman.	
5/14/79	ORDER granting rehearing en banc without oral argument filed. (fls) Copy to Sherwood; Marsh-Bass-Johnson; Scott; Levit; Wickham.	
5/31/79	Appellants' supplement brief on rehearing en banc, filed. Transmitted to CFH, HLW, JDB, DSR, HEW, KKH, JDP.	
9/26/79	Appellee's verified bill of costs filed. (jhl)	

Form A.O. 11a (July 1969)

GENERAL DOCKET
UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

CASE NO. 77-2260	APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF VIRGINIA, AT RICHMOND.

DATE	PROCEEDINGS	Filed
9/14/79	Opinion filed. dismissing the appeal filed. KKH P Winter join by Haynsworth and Butzner dissenting.	
9/14/79	Opinion and Notice mailed to counsel of record and the Clerk of the District Court at Richmond, VA. (wu)	
9/14/79	Judgment filed. (wu)	
10/5/79	Record on appeal in one volume, interrogatories in one box and depositions in one box returned to the Clerk of the District Court at Richmond, Va. (jhl)	
10/5/79	Certified copy of the judgment and printed copy of the opinion handed the Clerk of the District Court at Richmond, Va. (jl)	
10/16/79	Certified copy of the order of the Supreme Court denying certiorari October 1, 1979, filed. jhl	
2/14/80	Notice evidencing the filing petition for writ of certiorari in the Supreme Court February 9, 1980 filed. (No. 79-1236)(jhl)	
06/20/80	Record on appeal in nineteen (19) volumes received from the Clerk of the District Court at Richmond, VA. (wu)	
06/20/80	Certified copy of order granting petition for writ of certiorari (limited to question 1 presented by the petition) June 16, 1980, filed. (wu)	
06/20/80	Certified record in twenty (20) volumes transmitted to the Clerk of the Supreme Court. (wu)	

DOCKET ENTRIES
UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF RICHMOND, VIRGINIA

Dist/ Office	DOCKET Yr.	DOCKET NO.	FILING DATE Mo.	Day	Yr.	J	NO.	O	R	H 21
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	Inj.	2212	NO	75	0553-R

PLAINTIFFS

CARSON, FRANK L.
HATCHER, LAWRENCE
MINES, STUART E.

DEFENDANTS

1. AMERICAN BRANDS, INC., T/A THE AMERICAN TOBACCO COMPANY
2. LOCAL 182, TOBACCO WORKERS INTERNATIONAL UNION
3. TOBACCO WORKERS INTERNATIONAL UNION

CLASS ACTION

CAUSE

Alleged employment discrimination based on race and color - 42 U.S.C. §2000e and §1981; 28 U.S.C. §1343(4), 2201 and 2202; 5 U.S.C. §5596.

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Petitioner

Case set: 5/2/77 1WK
On Merits: 1/27/76 NOON
IPTO
On Liability: Status: 4-5-76 4:00
VI-17.76-
On Motion: 11:30
FITC : 4-1-77 10:00

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UNITED STATES DISTRICT COURT D.C. 1/75
DOCKET

DATE	NR.	PROCEEDINGS	
1975			
Oct. 24		Complaint filed and summonses issues. No trial by jury demanded.	sig
Nov. 20		Marshal's rets on sumns exec. filed.	lg
Nov. 24		ORDER that the Deft Unions shall have until 12/15/75 to respond to the Complaint, ent. 11/24/75, DDW, filed. Copies mailed to counsel of record as directed.	bah
No. 24		ORDER that the time within which the Deft American Brands, Inc. shall have to file its Answer to Pltf's Complaint is extended to and including 12/15/75, FHT. 11/24/75, DDW, filed. Copies mailed to counsel of records.	bah
Dec. 12		Pltf's First Interrogatories to Defts, filed.	bah
Dec. 16		Deft's Tobacco Workers Local Union 182 Answer and Affirmative Defenses, no jury requested, filed.	jlm

CONTINUED ON NEXT SHEET

Dec. 16	Deft's Tobacco Workers' International Union 182's Answer and Affirmative Defenses, no jury requested, filed.	jlm
Dec. 15	Answer to American Brands, Inc., no jury requested, filed.	jlm

1976

Jan. 12	Answers of American Brands, Inc. to Pltfs' First Interrogatories to Deft, filed. Attached exhibits A thru. F.	bah
Jan. 27	IPTO, non-jury, ent, 12-27-76, DDW, filed.	lg
Jan. 28	Pltfs' Second Interrogatories to Deft. Company, filed.	apc
Feb. 11	Objections by Defts to Pltfs' Interrogatories, filed.	bah
Feb. 23	Statement of Authorities in Support of Pltfs' Response to Deft's Objections to Interrogatories, filed.	bah
Feb. 23	Pltfs' Response to Deft's Objections to Interrogatories, filed.	bah

CONTINUED ON NEXT SHEET

Mar. 11	ORDERED that time within which Deft. American Brands has to answer Pltfs' Second Interrogatories extended to & Including 04/05/76 ENTERED by RRMjr on 03/11/76 & filed. Copies mailed to all counsel of record.	apc
Mar. 23	American Brands' First Set of Interrogatories to Pltfs, filed.	bah
Apr. 5	Answers to American Brands, Inc. to Pltfs' 2nd Interrogatories to Defts, filed (brown expandable folder) - (Attachment to Answer to No. 45 in box in Room 340).	bah
Apr. 6	Pltfs' First Interrogatories to Deft. Unions, filed.	apc
Apr. 20	ORDER that the time within which Pltfs have to answer American Brand's First Set of Interrogatories to Pltfs is extended to and includes, 5/24/76, ent. 4/19/76, DDW, filed. Copies mailed to all counsel of record.	bah
May 7	ORDER that Deft Unions shall have until 5-26-76 to respond to pltfs' interrogatories, ent. 5-7-76, DDW, filed. Copies mailed.	jlm

CONTINUED ON NEXT SHEET

May 27	Deft Tobacco Workers' Answers to 1st Interrogatories of pltf, filed.	jlm
May 27	Deft Local 182's Answers to 1st Interrogatories of pltf with exhibits, filed.	jlm
May 28	ORDER allowing pltfs until 6-7-76 to answer American Brands's 1st Interr. ent 5-27-76, DDW, filed. Copies mailed counsel.	lg
June 9	ORDER allowing pltfs to 6-10-76 to answer Amer. Brands' 1st Set of Interrogatories to pltfs, ent. 6-9-76, RRMjr, filed. Copies mailed.	jlm
June 9	Pltfs' Answers to American Brands' 1st Interrogatories to pltf, filed with attachments.	jlm
June 21	Local 182's First Interrogatories to Pltfs, filed.	bah
June 19	Pltfs' Answer to Local 182's First Interrogatories to Pltfs, filed.	bah
July 21	Deft American Brands' 2nd Set of Interrogatories to Pltf, filed.	jlm
Aug. 4	Refiled Consolidated Answers of Local 182 and TWIU to First Interrogatories of Pltf, filed.	bah

CONTINUED ON NEXT SHEET

Aug. 6	ORDERED counsel for Pltf. deliver to Clerk of Court check for $25 to compensate counsel for Local Union 182 & check for $25 to compensate counsel for Standard Brands; Clerk shall upon receipt of same deliver same to respective counsel for Defts, ENTERED by DDW on 08-04-76 & filed. Copies mailed to all counsel of record.	apc
Aug. 23	Pltfs' Response to American Brand's 2nd Set of Interrogatories, filed.	jlm
Oct. 6	Deft American Brands' Notice to Take Depositions of Lawrence Hatcher, et al on Oct. 20-21, 1976, filed. Subpoenas issued.	jlm
Nov. 3	Deposition of Richard Haskell Norrison taken on behalf of the Pltfs on 08/05/76, rec'd.	bah
Nov. 3	Deposition of Linwood Joseph Spain taken on behalf of the Pltfs on 09/21/76, rec'd.	bah
Nov. 3	Deposition of John Wrayburn Tucker taken on behalf of the Plts on 09/21/76, rec'd.	bah
Nov. 3	Deposition of Joseph James Ancell taken on behalf of the Ptlfs on 09.21/76, rec'd.	bah

CONTINUED ON NEXT SHEET

Nov. 3	Deposition of William Hopkins Bryant, Jr., taken on behalf of the Pltfs on 09/22/76, rec'd.	bah
Nov.	Deposition of Robert Landon Talman taken on behalf of the Pltfs on 09/22/76, rec'd.	bah
Nov. 3	Deposition of Joseph A. Savage taken on behalf of the Pltfs on 09/27/76, rec'd.	bah
Nov. 3	Deposition of Raymond Charles Strauss taken on behalf of the Pltfs on 09/22/76, rec'd.	bah
Nov. 3	Deposotion of William Fielding Tulloh taken on behalf of the Pltfs on 09/22/76, rec'd.	bah
Nov.	Deposition of Lawrence Hatcher taken on behalf of the Pltfs on 10/20/76, rec'd.	bah

1977

Jan. 3	Defts' Unions, Second Set of Union Interrogatories to Pltfs', filed	jen
Jan. 12	Pltfs' Motion for Post-Trial Proceedings, filed.	jlm
Jan. 12	Pltfs' Request for Inspection of Deft's Facilities, filed.	jlm
Jan. 12	Pltfs' Motion to Certify the Cause of a Class Action, filed.	jlm

CONTINUED ON NEXT SHEET

Jan. 31	ORDER certifying 2 classes as parties plts under prov. of R.23; granting pltfs' motion for post-trial proceedings; trial on 5-2-77 limited to liability only ent 1-31-77, DDW, filed. Copies mailed.	lg
Jan. 31	Pltfs' Response to Local 182's Second Set of Interrogatories to Pltfs, filed.	apc
Feb. 3	Pltfs' Amended Motion to Certify The Cause as A Class Action, filed.	len
Feb. 9	Deft. American Brands' Response to Pltfs' Amended Motion to Certify Cause as Class Action, filed.	apc
March 1	ORDER vacating order entered 1-31-77; action certified as class action ent 3-1-77, DDW, filed. Copies mailed.	lg
Apr. 15	Deft's American Brands, Inc. Memorandum in Support of Entry of Proposed Consent Decree, filed.	len
Apr. 18	Memorandum in support of entry of proposed consent decree filed by defts. Loc. 182 & Tobacco Wors Intl.	lg
Apr. 18	Pltf's Brief in Support of The Adoption of the Proposed Consent Decree, filed.	len

CONTINUED ON NEXT SHEET

May 05	Deposition of Jack S. Mines taken on behalf of the deft. on 10-21-76, rec'd.	len
May 05	Deposition of John Walter Luck taken on behalf of the deft. on 10-21-76, rec'd.	len
May 05	Deposition of Leon Macon Hatcher taken on behalf of the deft. on 10/21/76, rec'd.	len
05	Deposition of Louis Rudolph Mealy, Jr., taken on behalf of the deft. on 10/21/76, rec'd.	len
May 05	Deposition of Frank Lee Carson taken on behalf of the deft. on 10/21/76, rec'd.	len
May 05	Deposition of Roy C. Sandord, taken on behalf of the pltf. on 11/23/76, rec'd.	len
June 2	COURT MEMORANDUM AND ORDER refusing sketcl. for Consent Decree, ent 6-1-77, DDW, filed. Copies mailed.	jlm
June 24	Pltfs' Notice of Appeal of Order of the District Court issued on 06/01-77, filed.	len

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Richmond Division

FRANK L. CARSON
1843 W. Morre Street
Richmond, Virginia

LAWRENCE HATCHER
3836 Grandel Drive
Richmond, Virginia

STUART E. MINES
1603 Hickory Street
Richmond, Virginia

Plaintiffs, : CIVIL ACTION

vs. : NO. 75-0553-R

AMERICAN BRANDS, INC.,
T/A THE AMERICAN TOBACCO COMPANY
Serve: Henry T. Wickham, Esquire
1111 E. Main Street
Richmond, Virginia 23219

LOCAL 182, TOBACCO WORKERS
INTERNATIONAL UNION
Serve: Irving Cosby, Jr.,
Financial Security
Route 2, Box 308
Midlothian, VA

TOBACCO WORKERS INTERNATIONAL UNION
Serve: Rene Rondon, President
1522 "K" Street, N.W.
Washington, D.C. 20005,

Defendants. :

COMPLAINT

2.

INTRODUCTION

1. This action is brought by the plaintiffs on their own behalf and on behalf of the class they represent:

(a) to secure and enforce their rights under Title VII of the Civil Rights Act of 1964, 42 U.S.C. §1981; and the Fourteenth Amendment to the United States Constitution;

(b) for a declaratory judgment that:

(1) the defendants' employment practices evidence discrimination based on race and color, and

(2) the individual members of the aggrieved class be awarded monetary and other appropriate relief;

(c) for an injunction:

(1) to prohibit the perpetuation of the defendants' discriminatory hiring and employment practices, and

(2) to require the implementation of a viable equal employment opportunity plan;

(d) for back pay, front pay, compensatory and exemplary damages and costs of this suit, including reasonable attorneys' fees.

3.

JURISDICTION

2. This action is authorized by Title VII of the Civil Rights Act of 1964, 42 U.S.C. §2000e et seq., as amended; and 42 U.S.C. §1981. Jurisdiction of this Court is also invoked pursuant to 28 U.S.C. §1343(4) and 28 U.S.C. §§2201 and 2202, and the Back Pay Act, 5 U.S.C. §5596.

PARTIES

3. The named plaintiffs in this action are:

(a) Frank L. Carson, a black citizen of the United States and a resident of Richmond, Virginia, employed by the American Tobacco Company, Richmond, Virginia Leaf Department in Richmond, Virginia, and was a member in good standing of Local 182, Tobacco Workers International Union (hereinafter referred to as Local 182) and the Tobacco Workers International Union AFL-CIO (hereinafter referred to as the TWIU) through July of 1974.

(b) Lawrence Hatcher, a black citizen of the United States and a resident of Richmond, Virginia, is a former employee of the American Tobacco Company, Richmond Leaf Department, in Richmond, Virginia.

(c) Stuart E. Mines, a black citizen of the United States and a resident of Richmond, Virginia, is employed by the American Tobacco Company, Richmond Leaf Department, in Richmond, Virginia, and is a member in good standing of Local 182, Tobacco Workers International Union (hereinafter referred to as Local 182) and the Tobacco Workers International Union AFL-CIO (hereinafter referred to as the TWIU).

4. The defendants in this action are:

(a) The American Tobacco Company, located in Richmond, Virginia, (hereinafter referred to as "the Company"). The Company does business in the State of Virginia and the City of Richmond, and is an employer within the meaning of 42 U.S.C. §2000(e)-(b). The Company is engaged in an industry affecting commerce and employs more than one hundred persons.

(b) Local Union 182, Tobacco Workers International Union, AFL-CIO is engaged in an industry affecting commerce, has more than 100 members and exists in whole or in part for the purpose of dealing with the Company concerning grievances, labor disputes, wages, rates of pay, hours, and other terms or conditions of employment of some of the employees (including the plaintiffs) of the

Company in Richmond, Virginia, and is a labor organization within the meaning of 42 U.S.C. §2000(e)-(d).

(c) The Tobacco Workes International Union AFL-CIO is engaged in an industry affecting commerce, has more than 100 members and exist in whole or in part for the purpose of governing and assisting the Local in its dealings with the Company concerning grievances, labor disputes, wages, rates of pay, hours, and other terms or conditions of employment of some of the employees of the Company (including the plaintiffs) in Richmond, Virginia, and is a labor organization within the meaning of 42 U.S.C. §2000(e)-(d).

CLASS ACTION ALLEGATIONS

5. Plaintiffs seek to maintain this action as a class action pursuant to Rules 23(a) and 23(b)(2) of the Federal Rules of Civil Procedure. The class which the plaintiffs represent is composed of all black persons who have sought employment and who are employed or might in the future be employed by the Company's Richmond Leaf Department in Richmond, Virginia, who have been denied, or in the future will be denied equal employment opportunities by defendants on the

grounds of their color and race. There are common questions of law and fact affecting the rights of the members of this class who are, and continue to be limited, classified, and discriminated against in ways which deprive and tend to deprive them of equal employment opportunites, and otherwise adversely affect their status as employees because of color and race. These persons are so numerous that joinder of all members is impracticable. A common relief is sought. The interests of said class are adequately represented by plaintiffs. Defendants have acted or refused to act on grounds generally applicable to the class.

STATEMENT OF CLAIM

6. The defendants have denied the plaintiffs and the class they represent equal opportunities for hiring, promotion, transfer and on-the-job training and have thus restricted the plaintiffs to the lower paying and less desirable jobs which have traditionally been reserved for black employees of the Company.

7. The defendants have paid white employees of the Company higher wages than many black employees who are doing the same type of work.

8. Matters regarding the promotion and transfer of employees of the Company have been, at all times material to this action, governed and controlled by the collective bargaining agreements negotiated by Local 182, the TWIU and the Company and/or local supplemental agreements. Local 182 and the TWIU have failed in their duty to fairly represent plaintiffs and members of their class and have acquiesced and thus joined in the maintenance of a policy, practice, custom or usage of limiting these persons to the lower-paying and less desirable jobs available in the Company. The collective bargaining agreements entered into between the Company, Local 182, and the International were intended to discriminate on the basis of race and have in fact discriminated against plaintiffs and members of the class they represent because of their race.

9. The defendants have disciplined and/or terminated, or have acquiesced in the discipline and/or termination of members of the class plaintiffs represent solely because of their race.

10. All of the customs, policies, practices and usages herein complained of have existed prior and subsequent to July 2, 1965, and continue to exist at the present time.

THE NAMED PLAINTIFFS

11. The named plaintiffs have been victims of some or all of the discriminatory acts enumerated above.

12. Frank L. Carson was employed by the Company at its Richmond Leaf Department in August of 1972. While employed by the Company, he was denied the opportunity to transfer to the more desirable jobs at other Company facilities in the City of Richmond. Mr. Carson was terminated by the Company in July, 1974, for allegedly smoking on the job, a charge he denied. Mr. Carson requested Local 182 assistance in opposing his termination but was refused such representation.

13. Lawrence Hatcher was employed by the Company in July, 1974. During the period of his employment, he was repeatedly harassed by white supervisors because of his race. In September, 1974, Mr. Hatcher was terminated by the Company after having an argument with a white foreman who had repeatedly harassed him with racial comments.

14. Stuart Mines was employed by the Company at its Richmond Leaf Department in 1970. He has repeatedly requested that he be transferred to the more desirable jobs at other Company facilities in Richmond, Virginia, which have traditionally been

reserved for whites. The Company has refused to grant any of his requests. Mr. Mines has also been denied the opportunity to be promoted to a supervisory position. On many occasions he has been denied union representation because of his race. Mr. Mines has also been denied many of the fringe benefits, such as pension and profit sharing options, afforded other employees of the Company beause of his race.

RELIEF

Plaintiffs and the class they represent have suffered and will continue to suffer irreparable injury by the policies, practices, customs and usages of the defendants complained of herein until the same are enjoined by this Court. Plaintiffs have no plain, adequate or complete remedy at law to redress the wrongs alleged herein and this suit for a preliminary and permanent injunction and declaratory judgment is their only means of securing adequate relief.

WHEREFORE, plaintiffs pray that this Court advance this case on the docket, order a speedy hearing at the earliest practicable date, and upon such hearing, to:

1. Grant plaintiffs and the class they represent a preliminary and permanent injunction enjoining the defendants and their agents, successors, employees, attorneys, and those acting in concert with them and at their direction from continuing to maintain policies, practices, customs or usages of limiting plaintiffs and members of their class to the lower-paying and less desirable jobs, denying them on-the-job training opportunities, denying them the opportunity to advance to supervisory positions, denying them fringe benefits afforded other employees of the Company, and denying them adequate and effective union representation because of their race and color.

2. Establish a mechanism for the enforcement of said injunction, by requiring the defendants to present to the Court within 30 days from the issuance of the injunction, a plan, in form suitable for entry as a decree showing precisely and in detail how it will comply with the Court's order that it cease and desist from the pattern, practices, customs and usages of discrimination against the plaintiffs and members of their class on account of their race and color, as to compensation, terms, conditions and privileges of employment.

3. Enter a declaratory judgment that the policies, practices, customs and usages complained of herein violate, 42 U.S.C. §1981, Title VII, as amended by the Equal Employment Opportunity Act of 1972, the Fourteenth Amendment and the Back Pay Act.

4. Direct that all members of plaintiffs' clss be immediately promoted to the job which they have been denied by reason of discrimination with seniority in such job dating from the first instance of wrongful failure to place in said job.

5. Enter judgment for back pay and compensatory damages in an amount to be fixed upon inquest, and based upon the difference between wages, salaries, allowances and retirement-plan contributions each member of the class would have earned in the absence of illegal discrimination against them.

6. Grant plaintiffs compensatory and exemplary damages against the defendants for violating plaintffs' statutory and constitutional rights to equal employment opportunities.

7. Grant plaintiffs a permanent injunction enjoining the defendants, their agents, successors employees, subordinates, attorneys an those acting in concert with them, from threatening or engaging

in any acts of reprisal, retributions, punishment or harassment against the plaintffs because of their attempts to vindicate their rights and the rights of their class to equal employment opportunity.

8. Retain jurisdiction of this case until the defendants have taken all steps necessary to eliminate the effects of discrimination in the past, to prevent discrimination in the future, to protect the plaintiffs against reprisal, retribution, punishment or harassment and otherwise to comply with this Order.

9. Pay to plaintiffs their costs incurred herein, including reasonable attorneys' fees and expenses, as provided in Title VII, 42 U.S.C. §2000(e) et seq.

10. Grant such other and further relief to the plaintiffs and the class they represent as the Court may consider just and proper.

FRANK L. CARSON, LAWRENCE HATCHER and STUART E. MINES, Plaintiffs

By: /s/ John W. Scott, Jr.
Of counsel

IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF VIRGINIA

Richmond Division

FRANK L. CARSON, LAWRENCE HATCHER, and STUART E. MINES,	:	
Plaintiffs,	:	CIVIL ACTION No.
v.	:	75-0553-R
AMERICAN BRANDS, INC., T/A THE AMERICAN TOBACCO COMPANY	:	
LOCAL 182, TOBACCO WORKERS INTERNATIONAL UNION	:	
TOBACCO WORKERS INTERNATIONAL UNION,	:	
Defendants.	:	

ANSWER OF AMERICAN BRANDS, INC.

American Brands, Inc. (hereinafter American) for its Answer states as follows:

1. The plaintiffs' complaint fails to state a claim upon which relief can be granted.

2. American denies that the jurisdiction of this court is properly invoked as set forth in paragraph 2 of the Complaint.

3. American admits that Frank L. Carson and Lawrence Hatcher, who are black, were employed by it at the Richmond Leaf Department in Richmond, Virginia, and that Stuart E. Mines, who is black, is employed at the Richmond Leaf Department in Richmond, Virginia. The remaining allegations of paragraph 3 of the Complaint are denied.

4. American admits the allegations in paragraph 4(a) of the Complaint. American has no knowledge of the facts alleged in subparagraphs (b) and (c) of paragraph 4 and, therefore, denies them.

5. American denies the allegations of fact set forth in paragraph 5 of the Complaint and further denies that this action is properly brought as a class action pursuant to Rule 23 of the Federal Rules of Civil Procedure as stated therein.

6. American denies the allegations of fact set forth in paragraphs, 6, 7, 8, 9, 10 and 11 of the Complaint.

7. American states that Frank L. Carson was employed on July 31, 1972 and that he was terminated in July of 1974. The remaining allegations of paragraph 12 are denied.

8. American admits that Lawrence Hatcher was employed by it in July, 1974 and that he was terminated in September 1974. The remaining allegations of paragraph 13 are denied.

9. American states that Stuart Mines was employed at the Richmond Leaf Department on August 24, 1971. The remaining allegations of paragraph 14 are denied.

WHEREFORE, American requests that the relief prayed for by the plaintiffs be denied, that the Complaint against it be dismissed and that it be awarded its costs incurred in this action, including as a part thereof reasonable attorney's fees.

AMERICAN BRANDS, INC.
T/A THE AMERICAN TOBACCO COMPANY

By: /s/ Henry T. Wickham
Of Counsel

Henry T. Wickham, Esquire
John F. Kay, Jr., Esquire
Kenneth V. Farino, Esquire
Mays, Valentine, Davenport & Moore
23rd Floor - F & M Center
P.O. Box 1122
Richmond, Virginia 23208

Counsel for Defendant, American Brands, Inc.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Richmond Division

FRANK L. CARSON, et al,
Plaintiffs,

CIVIL ACTION No.
75-0553-R

v.

AMERICAN BRANDS, INC., et al.
Defendants.

==========

ANSWER OF INTERNATIONAL UNION

For its answer to plaintiffs' complaint, Tobacco Workers International Union (hereinafter "TWIU") by counsel admits, denies, alleges and otherwise responds as follows:

1.-2. The allegations in paragraphs 1 and 2 of the complaint do not require an answer. To the extent an answer is required, the said allegations are denied.

3. TWIU's counsel is without sufficient information to form a belief as to the truth of the allegations in paragraph 3 of the complaint, and the said allegations are accordingly denied.

4.(a)-(c) The allegations in paragraphs 4 (a) and 4(b) of the complaint are admitted, except that the allegation in paragraph 4(b) "(including

the plaintiffs)" is denied for reasons stated hereinabove. The allegations in paragraph 4(c) of the complaint concerning commerce and the statute constitute legal conclusions not requiring an answer. To the extent that an answer is required, the said allegations are denied. TWIU does have more than 100 members. The remaining allegations in paragraph 4(c) of the complaint are denied.

5. The allegations in paragraph 5 of the complaint are denied, and it is further denied that this action is properly brought as a class action pursuant to Rule 23 of the Federal Rules of Civil Procedure as stated therein.

6.-11. The allegations in paragraph 6 through 11 of the complaint are denied.

12-14. TWIU's counsel is without sufficient information to form a belief as to the dates of employment and termination of the referenced persons in paragraphs 12 thru 14 of the complaint, and these allegations are accordingly denied. The remaining allegations in these three paragraphs are also denied.

AFFIRMATIVE DEFENSES

1. The plaintiffs complaint fails to properly invoke the jurisdiction of this Court.

2. Plaintiffs have failed to state a claim upon which relief can be granted.

3. Plaintiffs have an adequate and complete remedy at law against the defendant Company.

4. Plaintiffs' claim is barred by limitations and laches.

5. The Secretary of Labor is an indispensable party defendant in this action.

6. The complaint fails to state a claim which can be maintained as a class action under the requirements of Rule 23, Federal Rules of Civil Procedure.

7. The complaint should be dismissed because defendant International has not been served with a proper notice of charge as required by the Civil Rights Act of 1964, as amended.

8. Plaintiffs have failed to exhaust their union administrative remedies, and other remedies provided by law.

9. Defendant International is not a party to any collective bargaining agreements involved, and as to it the complaint should be dismissed.

10. Plaintiffs have failed to exhaust their governmental administrative remedies.

TOBACCO WORKERS' INTERNATIONAL UNION

By: _____
Counsel

Jay J. Levit
Stallard & Levit
2120 Cen. Natl. Bank Bldg.
Richmond, VA 23219
and
James F. Carroll, Esq.
1120 Connecticut Ave. N.W. Suite 940
Washington D.C. 20036

CERTIFICATE

I hereby certify that on December 15, 1975 I mailed a true copy of the foregoing to counsel for the Company, Henry T. Wickham, Esq., 1111 E. Main St., 23rd Floor, Richmond, VA 23219; and counsel for the plaintiffs, John W. Scott, Jr., Esq., 615 Caroline Street, Fredericksburg, VA 23401.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Richmond Division

FRANK L. CARSON, et al.
Plaintiffs,

CIVIL ACTION No.
75-0553-F

v.

AMERICAN BRANDS, INC., et al.
Defendants.

==========

ANSWER OF LOCAL UNION NO. 182

For its answer to plaintiffs' complaint, Local Union No. 182 (hereinafter Local 182) by counsel admits, denies, alleges, and otherwise responds as follows:

1.-2. The allegations in paragraphs 1 and 2 of the complaint do not require an answer. To the extent an answer is required, the said allegations are denied.

3. Local 182's counsel is without sufficient information to form a belief as to the truth of the allegations in paragraph 3 of the complaint, and the said allegations are accordingly denied.

4.(a)-(c) The allegations in paragraphs 4(a) and 4(b) of the complaint are admitted, except that the allegation in paragraph 4(b) "(including the plaintiffs)" is denied for reasons stated hereinabove. The allegations in paragraph 4(c) of the complaint constitute legal conclusions not requiring an answer. To the extent that an answer is required, the said allegations are denied.

5. The allegations in paragraph 5 of the complaint are denied, and it is further denied that this action is properly brought as a class action pursuant to Rule 23 of the Federal Rules of Civil Procedure as stated therein.

6.-11. The allegations in paragraphs 6 through 11 of the complaint are denied.

12.-14. Local 182's counsel is without sufficient information to form a belief as to the dates of employment and termination of the referenced persons in paragraphs 12 thru 14 of the complaint, and these allegations are accordingly denied. The remaining allegations in these three paragraphs are also denied.

AFFIRMATIVE DEFENSES

1. Plaintiffs have failed to state a claim upon which relief can be granted.

2. Plaintiffs' claim is barred by limitations and laches.

3. The Secretary of Labor is an indispensable party defendant in this action.

4. The complaint fails to state a claim which can be maintained as a class action under the requirements of Rule 23, Federal Rules of Civil Procedure.

5. The complaint should be dismissed because defendant Local Union 182 has not been served with a proper notice of charge as required by the Civil Rights Act of 1964, as amended.

6. Plaintiffs have failed to exhaust their union administrative remedies, their governmental administrative remedies, and other remedies provided by law.

7. The plaintiffs' complaint fails to properly invoke the jurisdiction of this Court.

8. Plaintiffs have an adequate and complete remedy at law against the defendant Company.

TOBACCO WORKERS' INTERNATIONAL UNION

By: _____
Counsel

Jay J. Levit
Stallard & Levit
2120 Cen. Natl. Bank Bldg.
Richmond, VA 23219
and
James F. Carroll, Esq.
1120 Connecticut Ave. N.W. Suite 940
Washington D.C. 20036

CERTIFICATE

I hereby certify that on December 15, 1975 I mailed a true copy of the foregoing to counsel for the Company, Henry T. Wickham, Esq., 1111 E. Main St., 23rd Floor, Richmond, VA 23219; and counsel for the plaintiffs, John W. Scott, Jr., Esq., 615 Caroline Street, Fredericksburg, VA 22401.

Jay J. Levit

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Richmond Division

FRANK L. CARSON,	:	
LAWRENCE HATCHER, and	:	
STUART E. MINES,	:	
Plaintiffs,	:	CIVIL ACTION No.
v.	:	75-0553-R
AMERICAN BRANDS, INC., T/A THE AMERICAN TOBACCO COMPANY	:	
LOCAL 182, TOBACCO WORKERS INTERNATIONAL UNION	:	
TOBACCO WORKERS INTERNATIONAL UNION,	:	
Defendants.	:	

CONSENT DECREE

Plaintiffs brought this class action agaist the above-named defendants under Title VII of the Civil Righs Act of 1964, 42 U.S.C. § 2000(e) et. seq., as amended, 42 U.S.C. § 1981 and the Fourteenth Amendment to the United States Constitution. Jurisdiction is vested in the Court by

virtue of 42 U.S.C. § 2000(e)-5(f) and 28 U.S.C. § 1343(4).

Defendants expressly deny any violation of the Fourteenth Amendment of the United States Constitution, Title VII of the Civil Rights Act of 1964, as amended, or any other equal employment law, regulation or order. This Decree and Consent hereto does not constitute a finding or admission of any unlawful or discriminatory conduct by defendants.

Plaintiffs' consent to this Decree does not constitute a finding or admission that any of the employment practices of the Richmond Leaf Department of The American Tobacco Company, a division of American Brands, Inc., are lawful.

WHEREAS, plaintiffs and defendants are desirous of resolving all of the issues set forth in the Complaint without the time and expense of further litigation, and the parties have consented to the entry of this Decree, and it appearing to the Court that the entry of this Decree will further the objectives of the aforementioned federal statutes, and that the Decree fully protects the interests of the members of the class represented by plaintiffs, it is

ADJUDGED, ORDERED and DECREED, as follows:

1. GENERAL

Notwithstanding the fact that defendants deny any violation of the aforementioned federal statutes, and solely for the purposes of the settlement of this case and resolving the issues in the Complaint without the additional expense of further litigation, defendants hereby consent that their agents, officers, employees and successors in interest, and all persons in active concert or participation with them are permanently enjoined from discriminating against black employees at the facilities of the Richmond Leaf Department of The American Tobacco Company in Richmond, Virginia.

II. THE CLASS

The class represnted by plaintiffs is as follows:

Class 1. All black persons, whether currently employed or not, who were seasonal employees of The American Tobacco Company's Richmond Leaf Plant at any time on or after 9 September 1972; and

Class 2. All black persons who applied for seasonal employment at The American Tobacco Company's Richmond Leaf Plant at any time on or after 9 September 1972.

III. INJUNCTIVE RELIEF FOR THE CLASS

In full and final settlement of any and all claims for injunctive relief alleged in the Complaint, the parties agree to the following:

1. For the purposes of determining eligibility for vacations and for promotions, demotions, lay-offs and recalls, every current and future regular hourly paid production employee of the Richmond Leaf Department will be credited with actual time worked as a seasonal employee commencing with the date of hire of the last period of continuous employment as a seasonal employee in accordance with Section I of Article 7 of the current collective bargaining agreement governing seasonal employees. The combined total of such seasonal and regular employment will apply toward service requirements for vacations, and for promotions, demotions, lay-offs and recalls.

2. Regular employees who have served the probationary period as a seasonal employee during the last period of his or her continuous seasonal employment at Leaf prior to being transferred to regular Leaf employment will become eligible for medical benefits and sick benefits immediately upon such transfer to regular employment.

3 In the event that vacancies in hourly paid permanent production job classifications at the Richmond Leaf Department are not filled by regular production employees, then all qualified hourly paid seasonal production employees will be given the opportunity to fill such vacancies prior to hiring from the outside.

4 In the event that vacancies in the job classification, Watchman, at the Richmond Leaf Department are not filled by regular production employees, then all qualified hourly paid seasonal production employees will be given the opportunity to fill such vacancies prior to hiring from the outside.

5 The Richmond Leaf Department adopts a goal of filling the production supervisory positions of Foreman and Assistant Foreman with qualified blacks until the percentage of blacks in such positions equal 1/3 of the total of such positions. The date of December 31, 1980 is hereby established for the accomplishment of this goal.

IV. THE MONETARY CLAIMS OF THE CLASS

The Court finds from the evidence previously filed in the form of answers to interrogatories that there are no discriminatory hiring practices

at the Richmond Leaf Department. Accordingly, the Court holds that members of Class 2, as hereinabove defined, are not entitled to assert claims for monetary relief.

Claims for monetary relief may be asserted by indivdual members of Class 1, as hereinabove defined, by filing with the Clerk of this Court a proof-of-claim signed by the individual asserting such claim. The information required to be submitted on the proof-of-claim form and the time of filing same shall be determined by subsequent order of the Court.

Each member of Class 1 asserting a claim must prove that he or she was denied the opportunity to become a regular hourly paid production employee at the Richmond Leaf Department because of racially discriminatory acts, practices or policies of defendants and that he or she suffered economic harm as a consequence thereof.

Defendants may assert any and every defense to such claims that may have been available to them prior to the entry of this Decree. Defendants also expressly reserve the right to assert as a defense that no member of the class who was not or had not been an employee of the Richmond Leaf Department within the 120 day period prior to September 9, 1974 is entitled to monetary relief.

The Court shall determine by subsequent order the procedure for determining the entitlement of each member of the class to back pay and other monetary relief.

V. EXCLUSIVE REMEDY

It is agreed that this Decree embodies the exclusive remedy for any and all claims of alleged discriminatory employment practices based upon race of the plaintiffs and the members of the class, heretofore defined, as alleged in the Complaint against defendants occurring at any time before this Decree becomes final, and that no other actions will be brought to such persons against defendants with respect to such claims in any forum, administrative or judicial.

VI. NOTICE OF PROPOSED CONSENT DECREE

The Richmond Leaf Department shall give notice to all members of Class 1, as hereinabove defined, by posting in a conspicuous place on the bulletin boards of its plant a copy of the proposed Consent Decree. The Decree shall remain posted until it becomes final. In addition,

within 30 days after the proposed consent Decree is filed, the Richmond Leaf Department shall transmit by first-class mail to each Class 1 member a notice explaining the proposed Consent Decree and a class member's rights under it. The notice, which shall be subject to review by counsel for the plaintiffs prior to being mailed, shall include a copy of the proposed Consent Decree. The notice shall explain that any class member who objects to the proposed Decree must do so in writing within thirty-five (35) days of the postmark of the letter. These written objections must be mailed to:

Clerk
United States District Court
Eastern District of Virginia
Richmond Division
United States Court House
Tenth and Main Streets
Richmond, Virginia 23219

Re: Carson v. American Brands, Inc. et al.
Civil Action No. 75-0553-R.

VII. REPORTS

Within twelve months after this Consent Decree becomes final and within thirty days of each anniversary date of the entry of the final decree, for a period of three years, the Richmond

Leaf Department shall file with the Clerk of this Court the total number of production supervisory positions of Foreman and Assistant Foreman and the percentage of black employees in such positions. When the percentage of blacks in such positions equals one-third of the total of such positions, the Richmond Leaf Department shall be required to make no further reports.

VIII. ATTORNEY'S FEES AND COSTS

Counsel for the plaintiffs are hereby awarded reasonable attorney's fees and costs to be paid by the defendants, jointly and severally, within ten days after this Consent Decree becomes final. Counsel shall confer prior to that time to determine the amount of said fees and costs. Counsel for the plaintiffs shall also be entitled to reasonable attorney's fees and costs in connection with carrying out the injunctive provisions of this decree. Entitlement to and amount of attorney's fees and costs in connection with any award of monetary relief to class members shall be determined by subsequent order of this Court.

10.

The Court will decide, at a later date, whether each defendant will be required to pay a specific portion of the attorney's fees and costs awarded, and if so, the amount of the award allocable to each defendant.

ENTER: //

_____
United States District Judge

Agreed:

/s/ John W. Scott, Jr. (signature)
Attorney for Plaintiffs

/s/ Henry T. Wickham (signature)
Attorney for Defendant Company

/s/ Jay J. Levit (signature)
Attorney for Defendant Unions

IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF VIRGINIA

Richmond Division

FRANK L. CARSON, et al.,	:	
Plaintiffs,	:	CIVIL ACTION No.
v.	:	75-0553-R
AMERICAN BRANDS, INC., et al.,	:	
	:	
Defendants.	:	

MEMORANDUM IN SUPPORT OF ENTRY OF PROPOSED CONSENT DECREE

Plaintiffs filed this action against the defendants on October 24, 1975, alleging that their rights under Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 1981, and the Fourteenth Amendment to the United States Constitution had been violated. In the complaint, the plaintiffs sought declaratory, injunctive and monetary relief

and requested that the case proceed as a class action. The case was certified as a class action by court order dated march 1, 1977.

The parties have participated in extensive discovery which was followed by negotiations in an attempt to settle the issues raised by the complaint. These negotiations culminated in a proposed Consent Decree which the parties requested the Court to enter at the final pre-trial conference on April 1, 1977. At that conference the court expressed concern that the parties were no longer in an adversary posture and that certain provisions of the Consent Decree might violate the United States Constitution. The court requested the parties to submit memoranda covering these questions.

Rule 23

Section VI of the proposed Consent Decree requires the defendant Company to provide notice to all members of Class 1 by posting a copy of the proposed Decree on all the bulletin boards of the Richmond Leaf Plant. Additionally, the proposed Consent Decree and an explanatory notice will be mailed to all class members. The notice requirements of Rule 23(e) of the Federal Rules of

Civil Procedure will be satisfied by compliance with Section VI. Also, since any member of the class may object to the entry of the proposed Decree as a final order by filing a written objection with the Clerk, the proposed Decree provides assurance that this case will remain an adversary proceeding.

It should be noted, also, that the entry of this Consent Decree after notice to class members will have no greater or lesser effect on those who are not members of the class than it would were the Decree a final one entered after complete trial of the case by the Court since Rule 23 does not contemplate notice to anyone other than members of the class represented by the named plaintiffs.

Section IV of Proposed Consent Decree

The answers of defendant Company to interrogatories propounded by plaintiffs show conclusively, and plaintiffs so concede, that there are no discriminatory hiring practices at the Richmond Leaf Department. (Answers to interrogatories 14, 15, 41-52 and 57.) For example, by year, the percentage of new hires which were black are as follows: 1971 - 98.9%; 1972 - 98%; 1973 - 99%;

1974 - 97%; 1975 - 91.7%; 1976 - 100%. By year, the percentage of black applicants who were hired are as follows: 1971 - 90.1%; 1972 - 82.2%; 1973 - 99&; 1974 - 90.1%; 1975 - 28.6%; 1976 - 10.4%.

Section III of Proposed Consent Decree

Paragraph 1 of Section III provides that seasonal employees who become regular employees will be credited with actual time worked as a seasonal employee in determining their individual employee seniority date. This provision of course, will apply to all employees of the defendant at the Richmond Leaf Plant without regard to race.

Paragraph 2 will allow employees who successfully transfer from seasonal to regular employment to be eligible for medical benefits and sick benefits immediately upon such transfer if they have fully served a 44-working day probationary period during their seasonal employment. Again, this provision will apply to all Leaf employees regardless of race.

Paragraph 3 is a restatement of a practice which has been generally followed at the defendant Company for many years. Under present practice, vacancies in regular production job classifica-

tions are posted for seven working days. The most senior regular employee who signs the posting is given the first opportunity to qualify for the vacancy. If no regular employee signs the posting, management then canvasses the seasonal employees from senior to junior until it finds an employee who is interested in qualifying for the vacancy.

There is sound business reasoning behind this practice. Many of the jobs held by regular employees are similar or identical to jobs held by seasonal employees. Also, seasonal employees become familiar with premanent job classifications by working in close proximity to such jobs held by regular employees. This being the case, seasonal employees provide the Company with a ready pool of experienced employees who are better qualified to fill vacancies in regular employment than would be outside hire. Finally, it is fair and equitable to allow qualified seasonal employees the initial opportunity to transfer to regular job vacancies.

Paragraph 4 is redundent of Paragraph 3 inasmuch as the job classification of Watchman is considered an hourly paid permanent production job. The practice of defendant Company is and has been however, to canvass only the most

senior seasonal employees for interest in filling a permanent vacancy in the job of Watchman when no regular employee signs a posting for such vacancy. If none of the emplyees canvassed is interested, it has been the practice to fill the vacancy with an outside hire. This practice of canvassing only the most senior seasonal employees for interest in a permanent vacancy in the job of Watchman is supported by the real need to fill such vacancies with individuals who want to be watchmen. As of March 1, 1977, the inventory of stored tobacco at defendant Company was 138,583,770 pounds having a value of $214,113,265. The experience has been that seasonal and regular employees have been reluctant to take this job on a permanent basis because of the night, weekend and holiday work which is required. Also, the Company wants to avoid the problem of very junior seasonal employees taking the job for this limited purpose of obtaining regular employment from which he or she can bid on vacancies in permanent production job classifications, thus, in effect, by-passing all the more senior seasonal employees. However, for purposes of settling this lawsuit, the defendant Company has agreed to discontinue this practice.

Paragraph 5 establishes a goal for the filling of vacancies in production supervisory positions of Foreman and Assistant Foreman, the date for the accomplishment of which is December 31, 1980. Since 1959, eight blacks have been hired or promoted into such jobs and four of these were employees who were promoted from hourly paid production jobs. These four blacks have been the only hourly paid production employees so promoted since 1959. Also, since July 2, 1965, over 58% (7 of 12) of all vacancies in the positions of Foreman and Assistant Foreman have been filled by blacks. The total number of Foreman and Asssitant Foreman positions has been reduced 50% since July 2, 1965, yet the percentage of blacks in those jobs has increased from 2.4% to 28.6% during this period. The goal in Paragraph 5 is to further increase the number of blacks in these positions until they comprise one-third of the total.

This goal is very similar to self-imposed goals assumed by the Richmond Leaf Plant in its current affirmative action program. Since the defendant Company is a government contractor, such affirmative action programs have been required by Executive Order 11246 since its promulgation in 1965. In its 1977 program, the Richmond Leaf Plant is committed to making every effort to

recruit qualified minority individuals to fil any vacancies which may occur in the EEO job classification of officials and Managers. Thus, Paragraph 5 is largely comulative of requirements imposed by this executive order.

Respectfully submitted,

AMERICAN BRANDS, INC.

By /s/ Henry T. Wickham
Of Counsel

Henry T. Wickham
D. Eugene Webb, Jr.
Mays, Valentine, Davenport & Moore
23rd Floor, F&M Center
1111 East Main Street
Post Office Box 1122
Richmond, Virginia 23208

IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF VIRGINIA

Richmond Division

FRANK L. CARSON, et al.
Plaintiffs,

CIVIL ACTION No.
75-0553-R

v.

AMERICAN BRANDS, INC., et al.
Defendants.

==========

MEMORANDUM IN SUPPORT OF
ENTRY OF PROPOSED CONSENT DECREE

The Unions urge the Court to enter the proposed consent decree, having reviewed the memorandum in support thereof submitted by the Company, and having nothing substantial to add thereto. Of course, with respect to Article III, 5, the position of the Unions is that filling of supervisory positions is a management function.

TOBACCO WORKERS UNION LOCAL NO. 182
and TOBACCO WORKERS INTERNATIONAL UNION

By: /s/ Jay J. Levit
Counsel

Jay J Levit
STALLARD & LEVIT
2120 Cen. Natl. Bank Bldg.
Richmond, VA 23219

CERTIFICATE

I hereby certify that on April 15, 1977, I mailed a true copy of the foreging to Henry T. Wickham, Esq., 23rd Floor, F&M Center, 1111 East Main Street, P.O. Box 1122, Richmond, VA 23208 and to John W. Scott, Esq., Hill, Tucker & Marsh, 615 Caroline Street, Fredericksburg, VA 22401.

/s/ Jay J. Levit

IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF VIRGINIA

Richmond Division

FRANK L. CARSON, et al.
Plaintiffs,

CIVIL ACTION No.
75-0553-R

v.

AMERICAN BRANDS, INC., et al.
Defendants.

PLAINTIFFS' BRIEF IN SUPPORT OF THE ADOPTION OF THE PROPOSED CONSENT DECREE

Pursuant to the Court's request of April 1, 1977, plaintiffs, Frank L. Carson, et al., by counsel, hereby respectfully submit their brief in support of the adoption of the consent decree which has been endorsed by all parties in the case at bar.

I

STATEMENT OF THE FACTS

The defendant, American Brands, Inc. (hereinafter referred to as the "Company"), operates the Richmond Leaf Department of the American Tobacco Company in Richmond, Virginia, for the purpose of processing and storing leaf tobacco. The defendant Local 182 Tobacco Workers International Union has exclusive bargaining rights for the establishment of wage rates and other terms and conditions of employment for all hourly paid production unit positions at the Richmond Leaf Department. The defendant Tobacco Workers International Union is a national organization consisting of local unions, incuding Local 182.

The plaintiffs are present and former black seasonal employees at the Richmond Leaf Department and held jobs under the jurisdiction of Local 182 TWIU during their employment. As seasonal employees, the plaintiffs all worked at the Richmond Leaf Plant an average of six months each year. Regular employees worked at this same facility all year.

The Company employs approximately 150 seasonal employees, all of whom at the present time are black, and approximately 100 regular employees, of whom 348 are white. Plaintiffs are not aware of any white individuals who have ever been classified as seasonal employees at the Company's Richmond Leaf Plant.

Prior to September 1963, the regular job classifications of Truck Driver, Watchman, Maintenance Storage, and Boiler Operator at the Leaf Plant were reserved for whites only. As of February 15, 1976, sixteen persons were employed as Watchmen, one of whom was black.

Regular employees have the right to obtain any permanent position for which the TWIU has bargaining rights within the Richmond Leaf Department. Seasonal employees have the right to obtain any seasonal position for which the TWIU has bargaining rights within the Richmond Leaf Plant. Seasonal employees may transfer to regular classifications only when no regular employee desires that position. Should the seasonal employee transfer to a regular position he looses all of his seniority and is treated as a new hire for seniority purposes. Separate seniority rosters are maintained for regular and seasonal emplyees.

When a seasonal employee transfers to a regular position, he is placed at the bottom of the regular seniority roster irrespective of the number of years he has worked as a seasonal employee with the Company. This loss of seniority affects his status for promotions, demotions, lay-offs, recalls and vacations, or in short, the principal terms and conditions of his employment.

Since 1971, the vast majority of applicants and new hires at all of the Company's locations in the Richmond area have been black, as indicated by the following chart:

YEAR	APPLICANTS		NEW HIRES	
	BLACKS	WHITES	BLACKS	WHITES
1971	97	1	88	1
1972	118	5	97	2
1973	94	4	93	1
1974	71	7	64	2
1975	77	3	22	2

The racial composition of the production unit at the Richmond Leaf Department is as follows:

YEAR	REGULAR EMPLOYEES		SEASONAL EMPLOYEES	
	WHITES	BLACKS	WHITES	BLACKS
1968	41	52	--	116
1970	40	59	--	175
1973	40	56	--	176
1976	37	57	--	135

Of the 35 supervisory positions at the Company's Richmond Leaf Department as of April 5, 1976, seven, or 20%, were filled by blacks. Of the 229 persons in hourly paid production unit jobs at the Richmond Leaf Department in that same year, 192, or 84% were black.

II

ARGUMENT

A. The Provisions of Paragraphs III, 1 and 3 of the Proposed Consent Decree Should Be Adopted In Order To Equitably Restructure The Seniority System Of The Richmond Leaf Department.

Paragraph III, 1 of the Proposed Consent Decree states:

> 1. For the purposes of determining eligibility for vacations and for promotions, demotions, lay-offs and recalls, every current and future regular hourly paid production employee of the Richmond Leaf Department will be credited with actual time worked as a seasonal emplyee commencing with the date of hire of the last period of continuous employment as a seasonal

> employee in accordance with Section I of Article 7 of the current collective bargaining agreement governing seasonal employees. The combined total of such seasonal and regular employment will apply toward service requirements for vacations, and for promotions, demotions, lay-offs and recalls.

This provision would allow all persons who were employed as seasonal workers at the Richmond Leaf Plant to be credited with seniority for "actual time" worked at the plant from the beginning of their employment. This is exactly the same relief ordered by the United States Court of Appeals for the Fourth Circuit in the case of Russell v. American Tabacco Company, 528 F.2d 357, 364 (1975), when the Court ordered that seasonal employees shall be allowed to transfer to regular employment positions with each employee's departmental seniority "computed from his employment seniority date."

The provisions of Paragraph III,1 would also eradicate any vestiges of the effects of past racial discrimination since black seasonal employees would now be permitted to transfer to permanent positions without forfeiting their seniority. As the Fourth Circuit has repeatedly held:

> "Intentional segregation of the past that is perpetuated by a company's seniority system precludes the company from claiming that its system is bona fide within the meaning of § 2000e-2(h)." Russell v. American Tobacco Company, 528 F.2d 357, 363 (4th Cir. 1975); see also United States v. Bethlehem Steel Corp., 446 F.2d 652 (2d Cir. 1971); Robinson v. Lorillard Corp., 444 F.2d 791 (4th Cir. 1971); Griggs v. Duke Power Co., 420 F.2d 1225, 1236 (4th Cir. 1970).

The parties have attempted to alter the present departmental seniority system at the Richmond Leaf Department to equitably allow all persons to be credited with time served at the plant. Even though the Company will retain its regular and departmental seniority rosters, the new system will satisfy the provisions of 42 U.S.C. § 2000e et seq. by removing the inequities that presently exist in that system.

The provisions of Paragraph III, 3 of the proposed Consent Decree state:

> 3. In the event that vacancies in hourly paid permanent production job classifications at the Richmond Leaf Department are not filled by regular production employees, then all qualified hourly paid seasonal production employees will be given the opportunity to fill such vacancies prior to hiring from the outside.

This will allow seasonal employees to transfer to full time positions, some of which were at one time reserved for whites only, as vacancies occur. This relief again is the same type of remedy fashioned by the Fourth Circuit in Russell v. American Tobacco Company, 528 F.2d 357, 362-363 (1975). By permitting seasonal employees to transfer, as vacancies occur, to regular classifications not filled by current regular employees, the seasonal employees are permitted to obtain full-time employment, thereby allowing present employees of the company the opportunity to advance before there is outside hiring.

B. The Provisions Of Paragraph III 2 and 4 of The Proposed Consent Decree Should Be Adopted In Order To Fully Clarify The Provisions of Paragraphs III, 1 and 3.

Under the present seniority system at the Richmond Leaf Plant, all new regular employees must serve a probationary period prior to becoming eligible for health benefits. The proposed Consent Decree would allow all seasonal employees who have already served this probationary period to transfer into regular employment without having to serve an addition probationary period. There is no reason to again subject these employ-

ees to a probationary period with the attendant loss of medical insurance coverage. The Company proposed this provision for the purpose of removing all impediments to seasonal employee transfer and, as with the entire decree, all parties agreed.

The provisions of Paragraph III, 4 of the proposed Consent Decree parallel the provisions of Paragraph III, 1, and should be adopted for reasons previously stated herein. This paragraph was specifically included, however, because of the unique procedure used by the Company to fill vacancies in the "Watchman" classification, whereby a separate "eligibility list" is used to fill such positions prior to hiring from the "outside". This provision will negate any possible question as to whether the procedure used in filling "Watchmen" positions has been affected by the consent decree.

C. The Provisions Of Paragraph III, 5 Of The Proposed Consent Decree Will Assure That The Company Will Attempt And Fill Supervisory Positions At The Richmond Leaf Department With A Representative Number of Qualified Blacks

Paragraph III, 5 of the proposed Consent Decree states:

5. The Richmond Leaf Department adopts a goal of filling the production supervisory positions of Foreman and Assistant Foreman with qualified blacks until the percentage of blacks in such positions equals 1/3 of the total of such positions. The date of December 31, 1980 is hereby established for the accomplishment of this goal.

Such a provision merely establishes a "goal" for the Company to obtain in filling its supervisory work force. It does not establish a quota or demand that the Company employ persons who are less qualified than other applicants to fill a vacancy. This provision merely amends the Company's affirmative action plan to provide that the Company recognizes a need to employ qualified blacks in supervisory positions in meaningful numbers. The Richmond Leaf Plant employs a substantial number of blacks in blue collar positions. The use of qualified black persons as supervisors simply removes the stigma of decades of alleged inferiority that for so long relegated blacks to the position of "worker" but never "leader".

By adopting this goal, the Company is simply affirming that it will hire and promote all

qualified persons, including blacks, to supervisory positions irrespective of race, and will attempt to place blacks into such positions in large numbers as it has done in hiring blacks as hourly production workers.

III

SUMMARY

The proposed Consent Decree has been presented to the Court by all the parties as a fair, equitable and just resolution of the initial phase of this litigation. In recent years, the vast majority of applicants for positions at the Richmond Leaf Department have been black. Consequently, the racial composition of the hourly workforce has become majority black. Plaintiffs have not found any evidence of discriminatory hiring for positions in the hourly production unit. Plaintiffs contend, however, that the proposed Consent Decree will alleviate the present effects of past racial discrimination by establishing a fair and equitable seniority system at the Richmond Leaf Department that will permit all hourly production workers to advance as far as

their abilities will permit, while giving them credit for time served in the employ of the Company. The mandate of Title VII of the Civil Rights Act of 1964 will be satisfied by the adoption of the provisions of the Consent Decree as proposed by all the parties to this litigation, in that the terms and conditions of employment at the Richmond Leaf Plant will operate fairly and equitably for all its employees.

WHEREFORE, plaintiffs respectfully urge the Court to enter the Consent Decree submitted herein

FRANK L. CARSON, et al., Plaintiffs

By: /s/_____
Of Counsel

HENRY L. MARSH, III
WILLIAM H. BASS, III
RANDALL G. JOHNSON
HILL, TUCKER & MARSH
214 East Clay Street
P.O. Box 27363
Richmond, VA 23261

JOHN W. SCOTT, JR.
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615 Caroline Street
Fredericksburg, VA 22401

JACK GREENBERG
BARRY L. GOLDSTEIN
10 Columbus Circle
Suite 2030
New York, New York 10019

Counsel for Plaintiffs

CERTIFICATE

I hereby certify that a copy of the foregoing Breif was mailed, postage prepaid, to Henry T. Wickham, Esquire, Mays, Valentine, Davenport & Moore, Post Office Box 1122, Richmond, VA 23208; and to Jay J. Levit, Esquire, 1223 Central National Bank Building, Richmond, VA 23219, as counsel of record, this 18th day of April, 1977.

IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF VIRGINIA

Richmond Division

FRANK L. CARSON, et al.
Plaintiffs,

CIVIL ACTION No.
75-0553-R

v.

AMERICAN BRANDS, INC., et al.
Defendants.

==========

NOTICE OF APPEAL

Notice is hereby given that the plaintiffs, Frank L. Carson, et al., by counsel, hereby appeal to the United States Court of Appeals for the Fourth Circuit from the June 1, 1977, Order of the District Court refusing to enter a proposed Consent Decree and denying injunctive relief.

FRANK L. CARSON, et al
Plaintiffs

HENRY L. MARSH, III
WILLIAM H. BASS, III
RANDALL G. JOHNSON
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Counsel for Plaintiffs

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Washington, D.C. Office
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910 Seventeenth St.
N.W.20006
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January 10, 1978

Mr. William K. Slate, II
Clerk
United States Court of Appeals
For the Fourth Circuit
U.S. Court House
Tenth and Main Streets
Richmond, Virginia 23219

Re: Carson, et al v. American Brands, Inc., et al -No. 77-2260

Dear Mr. Slate:

On June 24, 1977, the plaintiffs in a Title VII action styled Carson, et al v. American Brands, Inc., et al, C.A. No. 75-0553-R, pending in the United States District Court for the Eastern District of Virginia, Richmond Division, filed a Notice of Appeal from an order of the District Court entered on June 1, 1977, refusing to enter a consent decree presented it by all parties to the action.

The defendants in the District Court, American Brands, Inc., t/a The American Tobacco Company, Local 182, T.W.I.U. and Tobacco Workers

International Union, did not take an appeal from the District Court's order and now take no position as to the merits of this appeal. Accordingly, no brief will be submitted by them unless, of course, the Court of Appeals should otherwise direct.

Moreover, inasmuch as the District Court's order was a refusal to enter a consent decree, the defendants are not, in fact or in law, appellees. Accordingly, this appeal would not appear to fulfill the "case or controversy" mandate of Article III, Section 2 of the United States Constitution. See, also, Moore v. Charlotte-Mecklenburg Board of Education, 402 U.S.47 (1971).

Counsel for the defendant Unions have requested American to state that they concur with the statements contained herein and likewise take no position as to the merits of the appeal.

Respectfully submitted

/s/ Henry T. Wickham
Henry T. Wickham
Counsel for American Brands, Inc.

29/312
cc: Jay J. Levit, Esquire
P. Peter Sherwood, Esquire
Henry L. Marsh, III, Esquire
John W. Scott, Jr., Esquire

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT
No. 77-2260

Filed
JAN 31 1978
WILLIAM K. SLATE, II
CLERK

Frank L. Carson, Lawrence Hatcher,
Stuart E. Mines,

Appellants,

versus

American Brands, Inc., t/a The American Tobacco Company; Local 182, Tobacco Workers International; Tobacco Workers International Union,

Appellees.

Appeal from the United States District Court for the Eastern District of Virginia, at Richmond. D. Dortch Warriner, District Judge.

Upon consideration of the appellant's motion for summary reversal and the appellee's response to the motion, by counsel,

IT IS ORDERED that the motion for summary reversal is denied.

FOR THE COURT - BY DIRECTION

/s/ William K. Slate, II
CLERK

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT
No. 77-2260

Filed MAR 27 1978
U.S. Court of Appeals
Fourth Circuit

Frank L. Carson, Lawrence Hatcher,
Stuart E. Mines,

Appellants,

v.

American Brands, Inc., t/a The American Tobacco Company; Local 182, Tobacco Workers International; Tobacco Workers International Union,

Appellees.

Appeal from the United States District Court for the Eastern District of Virginia, at Richmond. D. Dortch Warriner, District Judge.

O R D E R

The appellants' motion for summary reversal having been read and considered, and it being the view of the panel that the appeal presents questions of law and of fact on which oral argument should be heard,

IT IS, with the concurrence of Chief Judge Haynsworth and Judge Winter, ORDERED that the appellants' motion for summary reversal is hereby denied. The suggestion of American Brands, Inc. that the appeal should be dismissed is also denied.

The Clerk is directed to establish an appropriate briefing schedule inviting appellees to file a brief addressing the merits of the appeal and allowing appellants an opportunity to reply.

/s/_____.
United States Circuit Judge

/s/ Emily Rueger

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT
No. 77-2260

Filed
MAR 28 1978
WILLIAM K. SLATE, II
CLERK

Frank L. Carson, Lawrence Hatcher,
Stuart E. Mines,

Appellants,

versus

American Brands, Inc., t/a The American Tobacco Company; Local 182, Tobacco Workers International; Tobacco Workers International Union,

Appellees.

Appeal from the United States District Court for the Eastern District of Virginia, at Richmond. D. Dortch Warriner, District Judge.

For reasons appearing to the Court,

IT IS ORDERED THAT:,

1. twenty-five copies of the appellees' brief shall be filed on or before April 27, 1978;

2. the appellants' reply brief, if any, shall be filed 14 days after service of the appellees' brief;

FOR THE COURT - BY DIRECTION

/s/ William K. Slate, II .
CLERK

William K. Slate, II, Clerk
By Emily Rueger

UNITED STATES COURT OF APPEALS
Fourth Circuit
January 25, 1978

Telephone 782-2213
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Richmond, VA 23208

John W. Scott, Jr., Esq.
615 Caroline Street
Fredericksburg, VA 22401

Re: 77-2260, Frank L. Carson, et al vs.
American Brands, Inc., etc., et al

Dear Counsel:

I am writing to you at the request of the panel to call your attention to the recent decision of Seigal v. Merrick, ___F.2d___ 47 L.W. 2418 (2 Cir., Dec. 14, 1978), a copy of which I enclose. As a result of reading this case, the panel is concerned as to whether it has jurisdiction to entertain this appeal and the panel desires the views of counsel on this question.

Accordingly, you are requested to file a supplemental memorandum on this question by February 9, 1979. Your memoranda should be

filed simultaneously and each of you will have the opportunity to respond to the views of your adversary by February 16, 1979. Please file all of the memoranda with me so that I may forward them to the panel.

Very truly yours,

WILLIAM K. SLATE, II

By Carol R. Lemon
(Mr.) Carol R. Lemon
Chief Deputy Clerk

CRL:ecr

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA

Richmond Division

FRANK L. CARSON, et al.,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	CIVIL ACTION
	)	NO. 75-0553-R
AMERICAN BRANDS, INC., et al.,	)	
	)	
Defendants.	)	

MOTION

The defendants American Brands, Inc., Local 182, Tobacco Workers International Union, and Tobacco Workers International Union, by their respective counsel, move the Court for an order establishing a pre-trial conference pursuant to Rule 16 of the Federal Rules of Civil Procedure directing the attorneys for the parties to appear to establish a trial date and to consider such other matters as may aid in the disposition of this action. In support of this motion the defendants assert that they do not now consent to the entry of the proposed Decree which was presented to the Court by the parties at the final pre-trial conference on April 1, 1977, and that the case is once again before this Court, the appeal by plaintiffs having been dismissed by

the Court of Appeals for the Fourth Circuit on September 14, 1979, and the mandate having issued on October 5, 1979.

AMERICAN BRANDS, INC.

By Henry T. Wickham
Of Counsel

Henry T. Wickham
D. Eugene Webb, Jr.
Mays, Valentine, Davenport & Moore
23rd Floor, F&M Center
Post Office Box 1122
Richmond, Virginia 23208

LOCAL 182, TOBACCO WORKERS INTERNATIONAL UNION and TOBACCO WORKERS INTERNATIONAL UNION

By Jay J. Levit
Of Counsel

Jay J. Levit
Imperial Building
Third Floor
5th and Franklin Streets
Richmond, Virginia 23219

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing Motion was mailed to Henry L. Marsh, III, Esquire, Hill, Tucker & Marsh, 214 East Clay Street, P.O. Box 27363, Richmond, Virginia 23261, this 10 day of October, 1979

/s/ Henry T. Wickham

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Richmond Division
In the Chambers of Judge Warriner

FRANK L. CARSON, et al.,

v.

CIVIL ACTION
NO. 75-0553-R

AMERICAN BRANDS, INC., et al.,

TO: John W. Scott, Jr., Esquire
615 Caroline Street
Fredericksburg, Virginia 22401

Randy Johnson, Esquire
214 East Clay Street
Richmond, Virginia 23219

Henry T. Wickham, Esquire
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Richmond, Virginia 23208

Jay J. Levit, Esquire
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Richmond, Virginia 23219

NOTICE OF PRE-TRIAL CONFERENCE

Please be advised that the above-styled civil action has been placed on Judge Warriner's docket for trial. Judge Warriner has requested an initial pre-trial conference for November 15, 1979 at 11:30 a.m. It is anticipated that the conference will last approximately fifteen (15) minutes.

At this conference the Court will set dates for the completion of discovery, briefing schedules, dates for status conferences if any appear advantageous, a date for the final pre-trial conference and a trial date.

It is not necessary for the lawyer who expects to try the case to attend this initial pre-trial conference, but the lawyer who does attend should be familiar with the case and should have with him all available dates.

W. FARLEY POWERS, JR., Clerk

By: /s/ Linda K. McDonald
Deputy Clerk
Linda K. McDonald

Date: November 2, 1979

IF THIS CASE IS SETTLED PRIOR TO THE CONFERENCE, PLEASE CALL CLERK'S OFFICE, 782-2611. THANK YOU.